

COMPLIANCE BOARD OPINION 00-6

June 30, 2000

Mr. Charles W. Jagoe

The Open Meetings Compliance Board has considered your complaint of May 22, 2000, in which you alleged that the Open Meetings Act was violated in connection with meetings by the Mayor and Commissioners of Elkton on March 15, 2000, and April 5, 2000. For the reasons stated below, the Compliance Board finds that the Mayor and Commissioners violated the Act in connection with its April 5 closed session.

I

Analysis

In your complaint, you pointed out that minutes posted by the Town of Elkton on the Internet referred to “a March 15 closed meeting.” Specifically, the minutes stated that, “A closed meeting was held on March 15, 2000, under the authority of the State Government Article [§10-508](a)(1) to discuss personnel.” Your complaint noted that, “There was no mention of the closed meeting taking place following the regular [open] meeting, no indication of a vote to have such a meeting, and no reasons for such a meeting in the March 15th minutes.”

In a timely response on behalf of the Mayor and Commissioners, Mr. Lewis H. George, Jr., Town Administrator, stated that “we cannot locate or identify any public records indicating if the meeting was called and/or if so what transpired, except for a reference in the [later] minutes. This may have been an error in the minutes according to our administration office secretary.”

The Compliance Board cannot resolve the apparent uncertainty about what one might think is a straightforward factual question: did a closed session occur on March 15? If it did not, as Mr. George’s response implies but does not state explicitly, then obviously no violation of the Open Meetings Act occurred. If a closed meeting did occur, as stated in the minutes of the later meeting, then serious compliance issues would arise. The Compliance Board is disappointed that the Town did not provide a definitive response. Under the circumstances, however, we have no basis on which to reach a conclusion.

The second aspect of your complaint concerned a closed meeting on April 5, which you characterize as “unannounced.” In his response, Mr. George confirmed

that “a closed meeting was held on this date at 6:10 p.m., for the purpose of discussing a contractor’s proposal ... for privatizing trash service. Evidently, the procedures under which this meeting was held did not comply with the provisions [of the Open Meetings Act]. No action was taken by the Mayor and Commissioners as a result of this meeting.”

A discussion of “privatizing trash service” is subject to the Open Meetings Act, because such a privatization would require a contract with a private hauler. Therefore, even the early stages of discussion would be part of the process of “approving, disapproving, or amending a contract,” which is a “quasi-legislative function” subject to the Act. §10-502(j) of the State Government Article. Although §10-508(a)(14) allows a public body to conduct a closed session “before a contract is awarded or bids are opened, [to] discuss a matter directly related to a negotiating strategy or the contents of the bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process,” the closing of a meeting on this basis would require compliance with all aspects of the Open Meetings Act, including appropriate notice, closing procedures, and the preparation of minutes. As Mr. George has acknowledged, these legal prerequisites were not met.

II

Conclusion

In summary, the Open Meetings Compliance Board finds that the Mayor and Commissioners of the Town of Elkton violated the Open Meetings Act by holding a closed session on April 5, 2000, without meeting the Act’s requirements for such a session. The Compliance Board notes that, in your complaint, you pose a question: “If [the Mayor and Commissioners] are again in violation, what can be done to assure full compliance?” Under the Act, the Compliance Board has no authority to compel remedial or other actions; it is limited by law to the issuance of advisory opinions like this one. Should you or others conclude that remedial measures are needed, you may seek them from the court in an action brought under §10-510 of the State Government Article.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney McKeldin
Tyler G. Webb